

ACQUISITION REFORM TRAINING MODULE
Implementing Changes to Contract Award & Follow Up

- Establishing & Using Task Orders

- Establishing & Using Task Orders Exercise
- Debriefing & Other Contracting Process Changes
- Debriefing & Other Contracting Process Changes Exercise
- Changes in Protest, Dispute & Appeals Rules
- Changes in Protest, Dispute & Appeals Rules Exercise

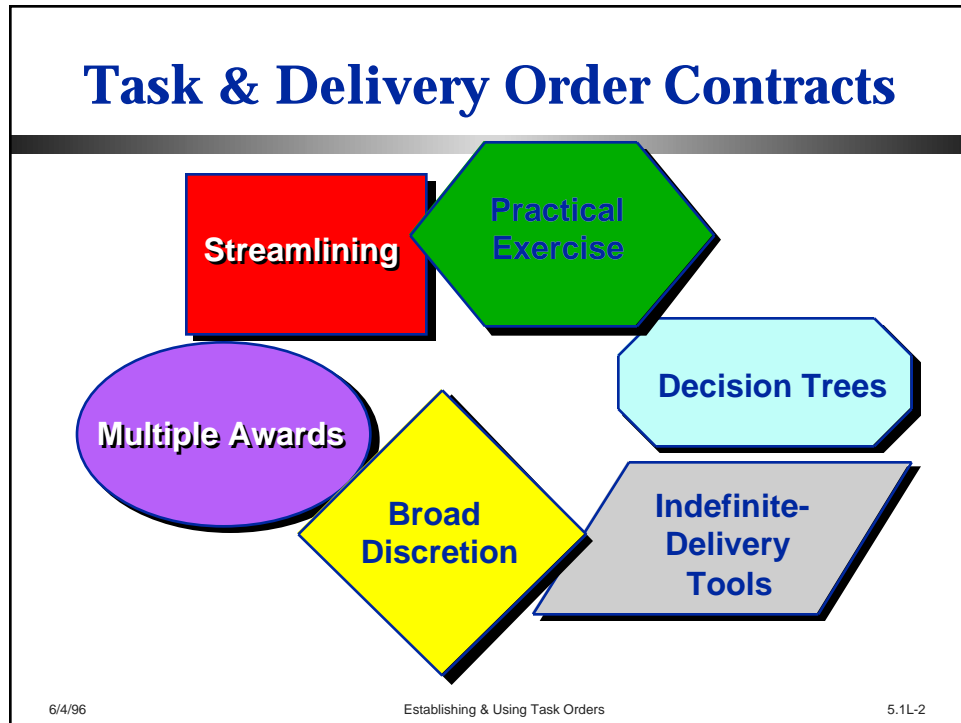
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Establishing & Using Task Orders

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Welcome to Implementing Changes to Contract Award and Follow-up.

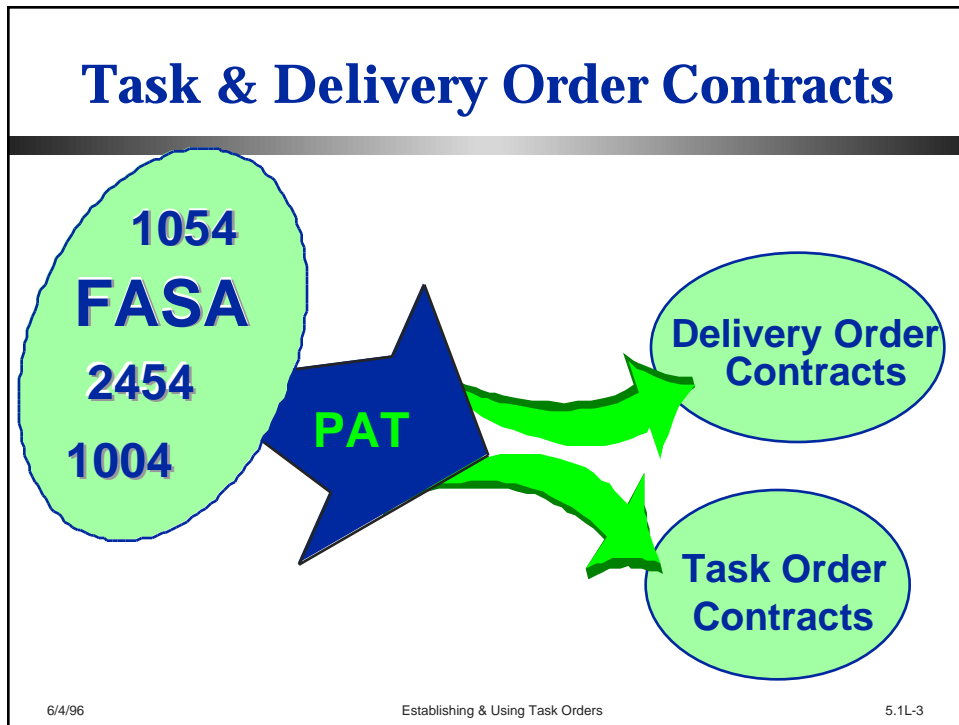
The first exercise set is Establishing and Using Task Order Contracts. Task order and delivery order contracts are new indefinite-delivery tools for the contracting officer's use. Using these tools requires combining skills in indefinite-delivery type contracts and awarding and administering contracts with multiple awardees. Task and delivery order contracts will enhance the effects of competition as well as shorten procurement lead time. Task orders support the Acquisition Reform Guiding Principles of reducing the time and cost of making the award as well as empowering people to manage.



Contracting officers are able to award multiple contracts under the same solicitation to two or more offerors for the same items or services. The Government states a preference for multiple awards. Task order rules streamline the contracting process and give contracting officers broad discretion in making multiple contract awards and in issuing orders where there are multiple awardees. The rule reflects the guiding principles of reducing cycle time and empowering the contracting officer.

During this lecture, I will introduce you to rules and definitions associated with this new FAR topic. Once that is complete, we will use a decision tree to illustrate the process to establish a task order contract and then a second tree to issue orders in a multiple awardee situation.

A multi-part exercise will measure your understanding of task and delivery order rules. The exercise will address factors to consider when establishing the contract. Finally, you will be given requirements to place as orders through the established contract and select the awardee based on the stated ordering procedures.



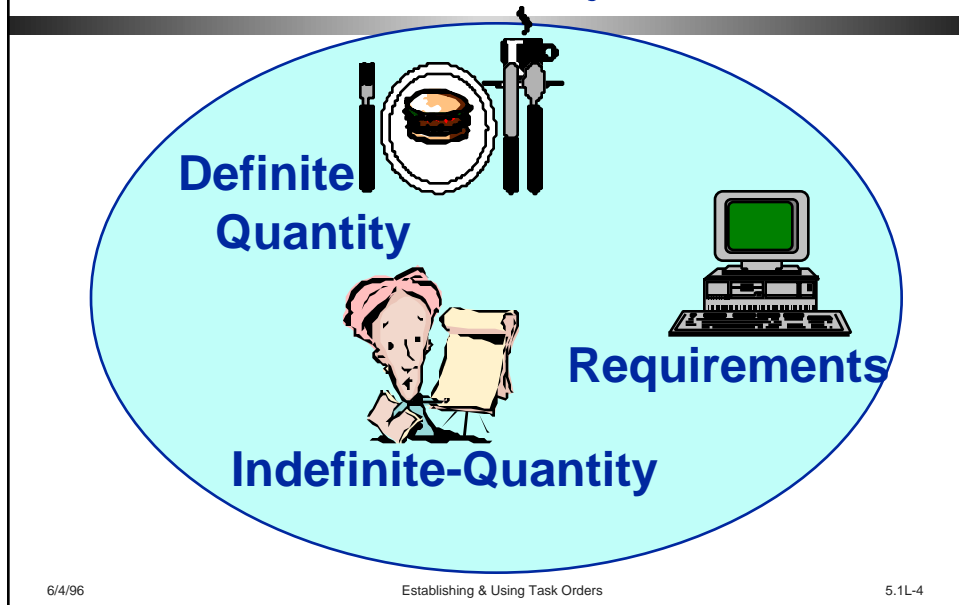
The final and interim rule on task and delivery order contracts was effective October 1, 1995. I say “final and interim” because as a result of public comment on the proposed rule, the scope of the rule has been revised to include construction and A&E services, FIP resources and utility services.

Task order contracting has been available to contracting officials for years. But for the first time, the FAR explicitly covers task order contracting. A “task order contract” is a contract for services that does not procure a firm quantity of services other than a minimum or maximum quantity and that provides for the issuance of orders for the performance of tasks during the period of the contract.

FAR defines “delivery order contract” as a contract for supplies that doesn’t procure or specify a firm quantity of supplies and that provides for the issue of orders during the contract period.

Delivery and task order contracts are indefinite-delivery contracts for use in conjunction with requirements or indefinite-quantity terms and conditions.

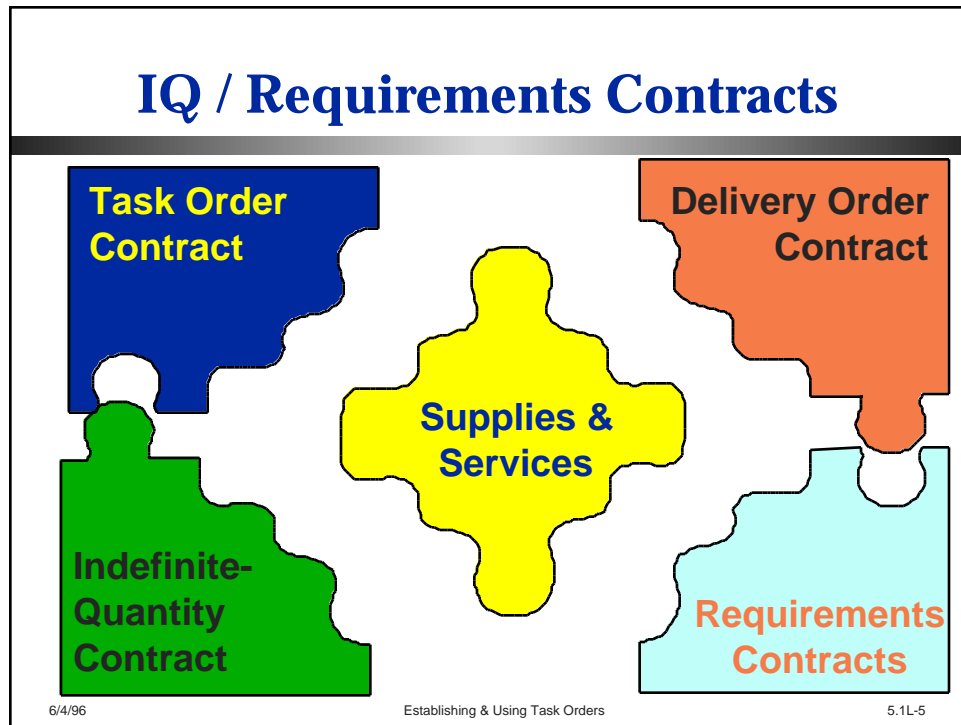
Indefinite-Delivery Contracts



First, a quick review of the three types of indefinite-delivery contracts is in order:

1. Definite quantity contracts: Specific supplies or services for a fixed period with deliveries at designated locations on order, e.g. a food services contract.
2. Requirements contract: Appropriate for acquiring items or services when the Government anticipates recurring requirements but cannot pre-determine the precise quantities that agencies will need during a definite period, e.g. computer hardware.
3. Indefinite-quantity contracts: An indefinite-quantity contract provides within stated limits, specific supplies or services to be furnished during a fixed period with deliveries to be scheduled by placing orders with the contractor.

Let's look at the pieces in this puzzle.

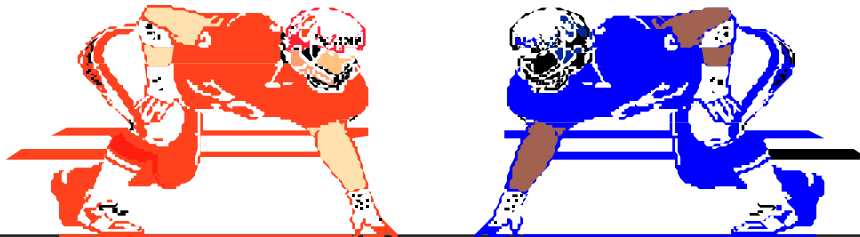


(16.503) I've said requirements contracts and indefinite-quantity contracts may be established to provide items or services. Requirements contracts and indefinite-quantity contracts are specific contract types, their description is contained in the appropriate FAR section.

But, task order contract and delivery order contract are broader terms. Because they are broader in scope, they are defined early in Part 16. Task order contracts are for *services*; delivery order contracts are for *supplies*.

Issue: Requirements Contracts vs. Multiple Awards

Definition of Requirement Contract
Entire Requirement is Contract Consideration
“Illusory Promise” Not Resolved
Specified Minimum/Maximum?



Requirements Contract = Single Contractor

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Let's look a moment at an issue the Task & Delivery Order Team addressed: requirements contracts.

The use of requirements contracts is at odds with multiple awards.

A requirements contract (**16.503**) implies that all of the agency's needs will be filled by a single contractor. No funds are obligated by the contract; all funds are obligated through individual orders. When the awardee has no guarantee to an order, a “void” contract is created. There is no consideration. This is an “illusory promise”.

The Task & Delivery Order Team believed that multiple awards were inconsistent with requirements contracts which require a contractor to receive the buyer's entire requirement to establish legal consideration for the contract. The working group was aware of no legal authority that recognizes the legitimacy of multiple award contracts where a requirement is continuously competed. The team was unable to resolve the specific issue.

Solicitations for Indefinite-Quantity Contracts

Period of the Contract
Maximum/(Minimum) quantity/
\$-Value of supplies/services
Statement of work describing the
general scope
Procedure to issue orders, "Fair
opportunity"
Notification to offerors of
multiple awards
AAS provision for multiple awards
over \$10M & 3 years



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The new rule specifies that these items be included in IQ solicitations:

1. The period of the contract, including the number of options and period for which the contract may be extended under each option.
2. The total minimum and maximum quantity or dollar value of services or supplies to be acquired under the contract.
3. Include in the SOW, specifications that reasonably describe the general scope, complexity and purpose of the supplies or services in a manner that enables a prospective offeror to decide whether to submit an offer.
4. State the procedures used in issuing orders. If multiple awards may be made, state procedures and selection criteria used to provide awardees a fair opportunity to be considered for each award - more on fair opportunity later.
5. If multiple awards may be made, include the new provision in the FAR **(52.216-27)** to inform offerors.
6. If a task order for AAS in excess of three years and \$10M is anticipated, include the provision **(52.216-28)** on Multiple Awards for AAS unless a determination is made to make a single award.

Multiple Award Preference



“The Contracting Officer shall... give preference to making multiple awards...under a single solicitation for the same or similar supplies or services.”

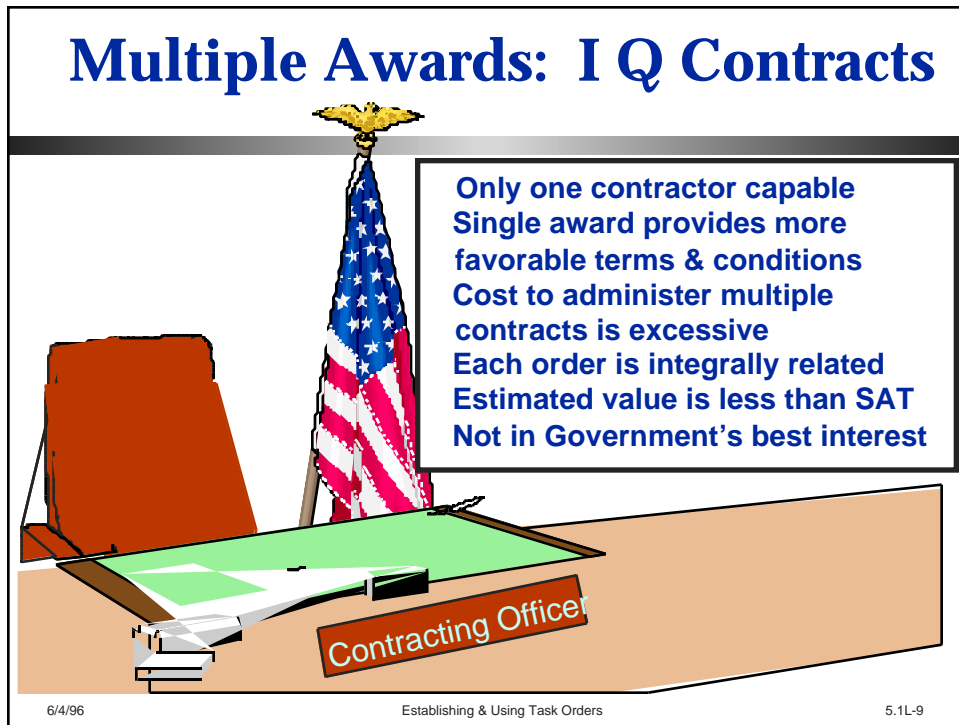
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(16.504(c)) The contracting officer shall, to the maximum extent practicable, give preference to making multiple awards of indefinite-delivery contracts under a single solicitation for the same or similar supplies or services to two or more sources. In making a determination as to whether multiple awards are appropriate, the contracting officer shall exercise sound business judgment. No separate written determination to make a single award is necessary when the determination is contained in a written acquisition plan.

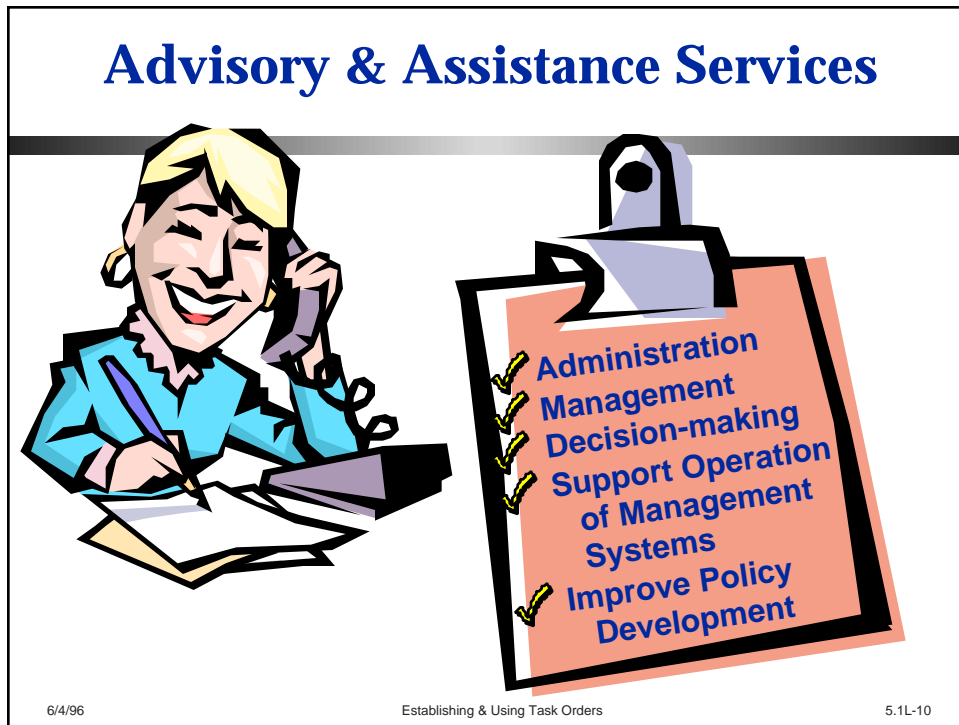
Downsides exist in multiple award contracting. Multiple award contracts may not represent a streamlined process, but rather contracting officials may be burdened with additional administrative problems. The process inevitably adds both administrative costs and resources to evaluate multiple proposals. The contracting officer must use business judgment to determine whether potential gains outweigh costs.



(16.504 (c)) Multiple awards should not be used when:

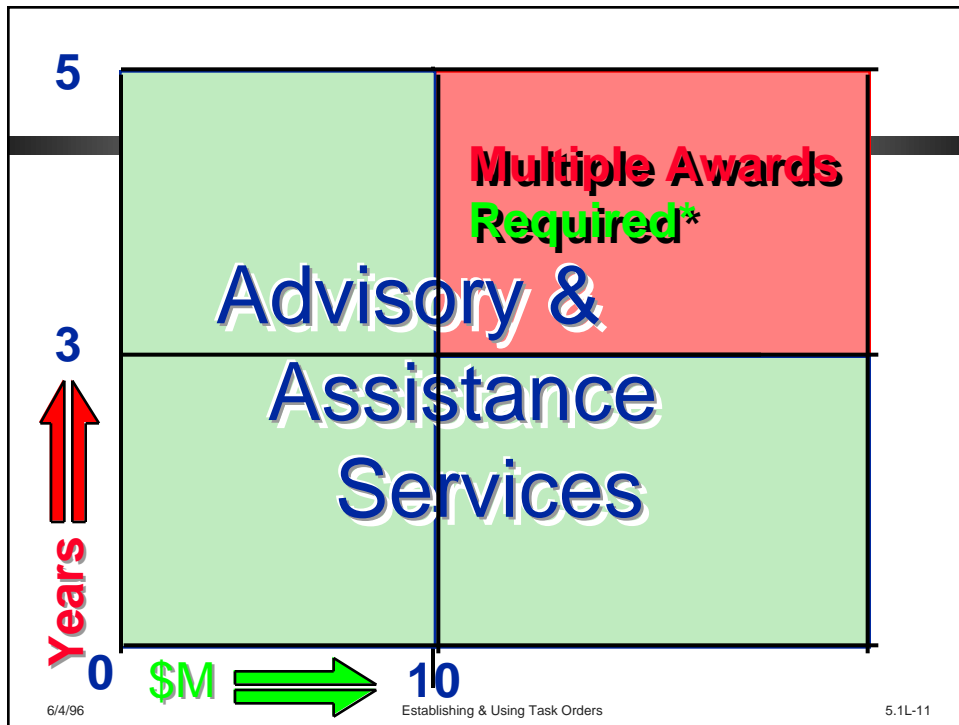
1. Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized.
2. Based on the contracting officer's knowledge of the market, more favorable terms will be provided if a single award is made.
3. The cost of administration of multiple contracts may outweigh any potential benefits from making multiple awards. (In the interim rule, this was part of exception two but because of its importance it has been separated into its own rule.)
4. Tasks likely to be ordered are so integrally related that only a single contractor can reasonably perform the work.
5. The total estimated value of the contract is less than the simplified acquisition threshold.
6. The contracting officer determines that multiple awards would not be in the best interests of the Government.

The contracting officer is provided broad discretion to use these rules to benefits the Government interests.



(37.202) Advisory and assistance services are a legitimate way to improve government services and operations. Advisory and assistance services contracts may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations. The chart shows a number of uses for advisory and assistance services.

Note that the “interim rule” contemplates including construction and A&E services, FIPs requirements and utility services. This may change.



(16.504(c)) This chart graphically depicts contracts for advisory and assistance services.

If an IQ contract for advisory and assistance services will not exceed three years and \$10M, a contracting officer is not required to give preference to making multiple awards. This is the green/vertically striped area on the graph. But if the contract will exceed three years and \$10M (the red/ horizontally striped area) multiple awards shall be made.

This requirement is not applicable to contracts for supplies or services that include AAS if the HCA determines the AAS are incident to and not a significant component of the contract.

There are also exceptions to the AAS rule.

Advisory/Assistance Services IQ: Exceptions to Multiple Awards

Determination that :

The services required are so unique or highly specialized that it is not practicable to issue more than 1 contract.

Only 1 offeror is capable of providing the services required at the level of quality required.

Only 1 offer received

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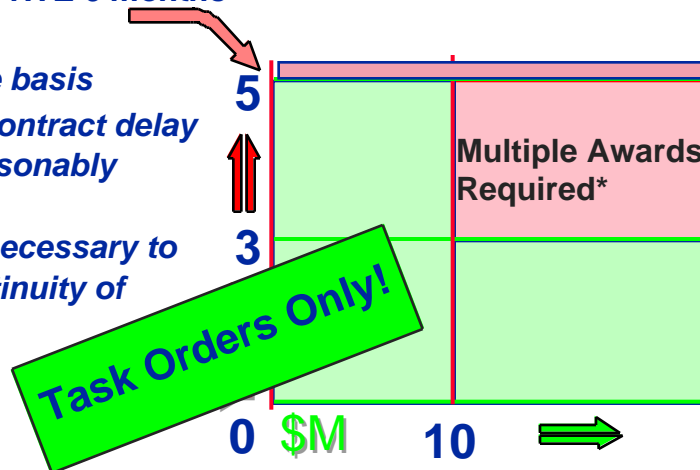
There are three exceptions to multiple awards for AAS IQ Contracts:

1. The contracting officer (or other official designated by the Head of the Agency) determines in writing prior to solicitation that services required under the contract are so unique or specialized that it is not practicable to award more than one contract. This determination may be appropriate when the work is so integrally related that only a single contractor can reasonably perform the work. (There may be circumstances where multiple awards are impracticable yet the services are not unique or highly specialized).
2. Determination is made in writing after evaluation of offers that only one offeror is capable of providing the services required at the level of quality required.
3. There is only one offer received.

Advisory/Assistance Services Contract Extensions

One extension NTE 6 months

*Sole-source basis
Follow-on contract delay
was not reasonably
foreseen
Extension necessary to
ensure continuity of
services*



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(16.505(c)) The ordering period of a task order contract for advisory and assistance services, including all options or modifications, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such a contract. Notwithstanding, the competition requirements of FAR Part 6, a task order contract for advisory and assistance services may be extended on a sole-source basis only once for a period not to exceed six months if the following conditions are met:

- The follow-on award is delayed by circumstances that could not be foreseen.
- An extension is necessary to ensure continuity of services pending award of the follow-on contract.



What are the implications of multiple awards?

If you're a contractor, you will have to compete for the contract and you may have to compete for the order as well. This may result in increased bid/proposal cost.

If you are the contracting officer, it may mean increased administration cost for multiple contracts and consideration of each awardee on each order - if it does, use one of the exceptions.

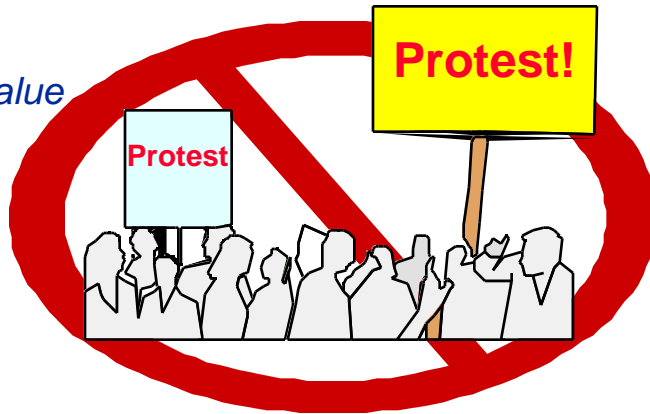
Additional work must be balanced by benefits to each party.

Ordering

Task/Delivery Order Contract Ombudsman

Protests

- *Maximum Value*
- *Scope*
- *Period*



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No protest under Part 33 is authorized in connection with the issue of an order under a TO/DO contract except for a protest on the grounds that the order increases the scope, period or maximum value of the contract. So what is the contractor's option?

The HCA shall designate a TO/DO contract ombudsman to review complaints from contractors on TO/DO contracts. The ombudsman shall review complaints and ensure that all contractors are offered a fair opportunity to be considered consistent with the procedures in the contract.

Neither FASA nor the FAR gives any specific authorities to the ombudsman to either stay performance or otherwise remedy the award of an order. Any authority given to an ombudsman will have to originate with the agency.



Let's find out what fair opportunity is about when ordering under multiple award task or delivery order contracts.

(16.505(b)(1)) "Fair opportunity to be considered" for each order greater than \$2,500 means each awardee must be give a fair opportunity to be considered under each order issued but rotational orders are not allowed.

The contracting officer has broad discretion in procedures and may award based on:

- Past performance.
- Price, cost, and cost control.
- Quality of deliverables.
- Other factors.

The contracting officer doesn't have to comply with Part 6 competition requirements. Written proposals and discussions are not necessary before issuing orders.

Ordering Under Multiple Award Contracts

“Fair Opportunity” need not be given awardees for a particular order over \$2500 if...



Urgency **Quality**

Economy/Efficiency **Minimum Guarantee**

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(16.505(b)(2)) Awardees need not be given fair opportunity to be considered for an order in excess of \$2500 under multiple delivery/task order contracts if the contracting officer determines that:

- The agency need is of such urgency that providing fair opportunity to all awardees would result in unacceptable delays.
- Only one contractor is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized.
- Order should be issued on a sole-source basis in the interests of economy or efficiency as a logical follow-on to an order already issued.
- Finally, if an award satisfies a minimum guarantee - a requirement in IQ contracts.

Implications of “Fair Opportunity” Rules



Each awardee must be given a fair opportunity to compete for each order but must each awardee bid on each order?

The rule is silent in this regard. It will be each agency's decision on how to address the issue.

No allocation of orders.

Nature of exceptions.

Once again, broad discretion is given the contracting officer. The contracting officer's interpretation of terms such as “urgency” or “uniqueness” or “unacceptable delays” give the CO great leeway. Additionally, the awardee cannot protest orders except on a narrow range of issues.